

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAULA LYNN WELCH,

Plaintiff,

vs.

DOUGLAS COUNTY DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

8:20CV532

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On February 10, 2021, the court ordered Plaintiff to show cause within 30 days why this case should not be dismissed for failure to pay an initial partial filing fee of \$3.68. *See* Filing 8. Plaintiff responded to the show-cause order by stating that her husband personally made the required payment on February 3, 2021. *See* Filing 9. However, the court has no record of such a payment. Plaintiff also asks how she can make the payment out of her trust account at the Douglas County Correctional Center. *See* Filing 10. The court sent a copy of its order granting Plaintiff IFP status to DCCC on January 8, 2021, *see* Filing 7, so it should simply be a matter of Plaintiff giving DCCC authorization for withdrawing the money from her account and forwarding it to the court.

If Plaintiff does not have sufficient funds in her trust account to pay the initial partial filing fee, the court may suspend the requirement that the initial partial filing fee be paid at the outset of the case. *See Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 957 n. 9 (D. Neb. 2001). Instead, “the whole of the . . . filing fees are to be collected and paid by the installment method contained in § 1915(b)(2).” *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). “In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4); *see Pawneeleggins v. Jared*, 782 Fed.Appx. 517 (8th Cir. 2019) (per curiam) (dismissal of inmate’s complaint for failure to pay initial partial filing fee was abuse of discretion where failure to make timely payment was due to lack of

available funds) (citing *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (for prisoners whose prior account balances resulted in assessment of initial fee, but who do not have funds available when payment is ordered, § 1915(b)(4) should protect them from having their cases dismissed for non-payment)).

The court will give Plaintiff 30 days to pay the initial partial filing fee of \$3.68 or else to provide competent proof either that (1) the payment was in fact made by her husband on February 3, 2021, or (2) she does not currently have sufficient funds in her trust account to make the payment.

IT IS THEREFORE ORDERED:

1. Plaintiff will have 30 days to pay the initial partial filing fee of \$3.68, or to show either proof of payment or proof that she does not have sufficient funds to make the payment.

2. In the absence of payment or good cause shown, this case will be dismissed without prejudice and without further notice.

3. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: May 24, 2021: check for response to show cause order.

Dated this 22nd day of April, 2021.

BY THE COURT:


Richard G. Kopf
Senior United States District Judge